

Message Text

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PM/ISO:DPUSAGE (DRAFT)
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OSD/GC:HHALMOND, JR. (DRAFT)
SAFBC:BALLEN (DRAFT)
OSD/ISA/EA&P:CAPT. SHAID (DRAFT)
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DOD/ISA/FMR:RLONG (DRAFT)

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R 012321Z MAY 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO CINCPAC

C O N F I D E N T I A L STATE 089722

E.O. 11652: GDS

TAGS: MARR, US, RP

SUBJECT: MBA NEGOTIATIONS - ARTICLE IV - MOVEMENT OF
VESSELS, VEHICLES, AND AIRCRAFT

REFS: A. MANILA 3124, MAR 19, 1973

B. STATE 7233, JAN 13, 1972

CINCPAC ALSO FOR POLAD

1. WE SEE THESE REMAINING ISSUES IN ARTICLE IV, MBA:

A. PAYMENT OF FEES BY MSC VESSELS WHEN USING PHILIPPINE

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COMMERCIAL PORTS;

B. CLEARANCE FOR U.S. PUBLIC VESSELS ENTERING PHILIPPINE
COMMERCIAL PORTS;

C. DEFINITION OF THE TERM "PUBLIC VESSELS";

D. PROPER TERMINOLOGY FOR AIRCRAFT.

THESE ISSUES WILL BE DISCUSSED SERIATIM.

2. WE HAVE ALREADY AGREED THAT NONSTATE AIRCRAFT SHALL PAY
LANDING AND PARKING FEES WHEN USING PHILIPPINE CIVIL AIR-
PORTS. WE ARE NOW PREPARED TO AGREE THAT BERTHING FEES AND
OTHER VESSEL CHARGES MAY BE PAID FOR PUBLIC VESSELS ON TIME
AND VOYAGE CHARTER WHEN PHILIPPINE COMMERCIAL PORTS ARE
USED.

3. WE ARE ALSO PREPARED TO AGREE THAT CLEARANCE MAY BE
REQUIRED BEFORE
THE ENTRANCE OF U.S. PUBLIC VESSELS INTO
PHILIPPINE COMMERCIAL PORTS UNDER NORMAL CONDITIONS. BY
CLEARANCE IS MEANT DIPLOMATIC CLEARANCE FOR USS AND USNS
VESSELS, AND CLEARANCES CUSTOMARILY REQUIRED OF MERCHANT
VESSELS FOR GAA AND TIME AND VOYAGE CHARTER VESSELS.

4. IT REMAINS FIRM U.S. POSITION THAT ALL MILITARY SEALIFT
COMMAND SHIPS, SUCH AS USS, USNS, GAA AND THOSE ON TIME AND
VOYAGE CHARTER, BUT EXCLUDING THOSE ON SPACE CHARTER, ARE
"PUBLIC VESSELS" WITHIN THE MEANING OF ARTICLE IV AND AS
AGREED IN THE EXCHANGE OF NOTES DATED APRIL 24, 1969.
WHILE RETAINING THIS POSITION, WE ARE WILLING TO ACCEPT
SEPARATE TREATMENT FOR CHARTERED VESSELS IN SOME REGARDS,
AS SHOWN IN PARAGRAPHS 2 AND 3 ABOVE. IN VIEW OF THE PRO-
LONGED NEGOTIATIONS PRECEDING THE 1969 AGREEMENT, THE RE-
NEWED GOP ATTACK ON THIS CONCEPT DURING THOSE NEGOTIATIONS,
AND IN ORDER TO PRECLUDE FUTURE DISPUTE ON THIS MATTER, WE
BELIEVE IT NECESSARY TO INCLUDE IN THE ARTICLE A DEFINITION
OF PUBLIC VESSELS WHICH COINCIDES WITH THE 1969 AGREEMENT.

5. WE DO NOT BELIEVE THERE IS ANY SUBSTANTIAL DISAGREEMENT
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BETWEEN THE GOP AND THE USG AS TO WHICH AIRCRAFT ARE IN-
CLUDED IN THE SCOPE OF THE TERM "STATE AIRCRAFT." THE ONLY
PROBLEM IS ONE OF ACCEPTABLE TERMINOLOGY. THE USG IS NOT
WILLING TO ACCEPT ANY PHRASE WHICH COULD BE CONSTRUED AS
USING THE TERM "PUBLIC" TO MODIFY AIRCRAFT. "PUBLIC AIR-
CRAFT" IS NOT A RECOGNIZED TERM IN INTERNATIONAL LAW, AND
ITS UNCERTAIN PARAMETERS WOULD REQUIRE INCLUDING WITHIN THE
TEXT OF THIS ARTICLE A DEFINITION OTHERWISE UNNECESSARY.

HOWEVER, WE WOULD ACCEPT USE OF THE TERM "MILITARY" AS A SUBSTITUTE FOR THE TERM "STATE".

6. FOLLOWING TEXT MAY BE TABLED UPON RESUMPTION OF TECHNICAL PANEL MEETINGS:

"ARTICLE IV: MOVEMENT OF VESSELS, VEHICLES AND AIRCRAFT

"1. UNITED STATES PUBLIC VESSELS AND STATE (ALTERNATIVE TERM: MILITARY) AIRCRAFT, AS WELL AS OTHER AIRCRAFT OPERATED FOR OR UNDER THE CONTROL OF THE UNITED STATES GOVERNMENT FOR OFFICIAL PURPOSES, AND UNITED STATES GOVERNMENT-OWNED VEHICLES, INCLUDING ARMOR, SHALL BE ACCORDED FREE ACCESS TO AND MOVEMENT BETWEEN PORTS, AIRPORTS, AND UNITED STATES BASES THROUGH THE PHILIPPINES, INCLUDING TERRITORIAL

WATERS, BY LAND, AIR AND SEA. THIS RIGHT SHALL INCLUDE FREEDOM FROM COMPULSORY PILOTAGE EXCEPT FOR SERVICES REQUESTED AND RENDERED, WHICH SHALL BE PAID FOR AT REASONABLE RATES. THIS RIGHT SHALL ALSO INCLUDE EXEMPTIONS FROM ALL TOLLS, DUES, FEES UND OTHER SIMILAR CHARGES, EXCEPT LANDING AND PARKING FEES FOR NON-STATE (ALTERNATIVE TERM: NONMILITARY) AIRCRAFT WHEN PHILIPPINE CIVIL AIRPORTS ARE USED AND EXCEPT BERTHING FEES AND OTHER VESSEL CHARGES FOR PUBLIC VESSELS ON TIME AND VOYAGE CHARTER WHEN PHILIPPINE COMMERCIAL PORTS ARE USED. IN CONNECTION WITH ENTRANCE INTO PHILIPPINE COMMERCIAL PORTS BY UNITED STATES PUBLIC VESSELS UNDER NORMAL CONDITIONS, DIPLOMATIC CLEARANCE SHALL BE OBTAINED FROM PHILIPPINE AUTHORITPES FOR USS AND USNS VESSELS, AND CLEARANCES CUSTOMARY FOR MERCHANT VESSELS SHALL BE OBTAINED FROM APPROPRIATE PHILIPPINE AUTHORITIES FOR GAA AND TIME AND VOYAGE CHARTER VESSELS. IT IS AGREED
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THAT ALL SHIPS OWNED OR OPERATED BY THE UNITED STATES, INCLUDING ALL MILITARY SEALIFT COMMAND SHIPS, SUCH AS USS, USNS, GAA AND THOSE ON TIME AND VOYAGE CHARTER, BUT EXCLUDING THOSE ON SPACE CHARTER, ARE "PUBLIC VESSELS" WITHIN THE MEANING OF THIS ARTICLE.

"2. LIGHTS AND OTHER AIDS TO NAVIGATION OF VESSELS AND AIRCRAFT PLACED OR ESTABLISHED IN THE BASES AND TERRITORIAL WATERS ADJACENT THERETO OR IN THE VICINITY OF SUCH BASES SHALL BE COMPATIBLE WITH THE SYSTEM IN USE IN THE PHILIPPINES. THE POSITION, CHARACTERISTICS AND ANY ALTERATIONS IN THE LIGHTS OR OTHER AIDS SHALL BE COMMUNICATED IN ADVANCE TO THE APPROPRIATE AUTHORITIES OF THE PHILIPPINES.

"3. PHILIPPINE COMMERCIAL VESSELS MAY USE THE BASES ON THE

SAME TERMS AND CONDITIONS AS UNITED STATES COMMERCIAL
VESSELS."

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